

A “Regional LEDPA” approach is not appropriate for Bay Delta Conservation Plan.

1. Supporting a “Regional LEDPA” approach by evaluating the Delta Conveyance at the project level and restoration activities at the programmatic level is not consistent with CWA regulations (40 CFR 230.1(d)) or policy (1990 Memorandum of Agreement between The Department of the Army and The Environmental Protection Agency regarding THE DETERMINATION OF MITIGATION UNDER THE CLEAN WATER ACT SECTION 404(b)(1) GUIDELINES). CWA Section 404 mitigation sequencing requires maximizing avoidance and minimization of impacts to aquatic resources and using compensatory mitigation for unavoidable impacts. The BDCP is proposing to build a new water conveyance system in the short term and provide large scale conservation and restoration at an unidentified point in the future. If we consider this from the “regional LEDPA” perspective, the water conveyance system is the primary development project with impacts to CWA jurisdictional resources in the BDCP and the restoration projects are the regional mitigation through avoidance, minimization, and compensation. It is difficult to support a regional LEDPA conclusion because CWA Section 404 sequencing is violated by impacts being permitted in the short-term while avoidance, minimization, and compensation are to be provided at an unidentified future date. The Regional LEDPA approach is supported by EPA for the Placer County Conservation Plan (PCCP) because that strategy provides for avoidance and minimization to occur at the same time as impacts from development projects. The PCCP plan seeks to outline areas for potential development actions (impacts and onsite avoidance and minimization) and areas for potential conservation/restoration (landscape scale avoidance & minimization, and compensation) actions that occur together over the life of the ESA Section 10 permit.
2. The “Regional LEDPA” concept took years to develop and is not yet agreed upon for the PCCP. BDCP does not appear to have time in the schedule to work on this concept and it is not yet a tested foundation for supporting CWA permits. The “Regional LEDPA” concept was outlined in 2006 for the PCCP using ideas developed by regulators years earlier. The PCCP is not complete; Placer County does not have a Section 10 ESA permit; the Corps of Engineers has not issued any CWA 404 permits based on a regional LEDPA.
3. The Delta Conveyance Project is primary ‘development’ project in the BDCP and DWR is seeking an individual CWA Section 404 permit for the actions associated with building a new conveyance. This project has to meet the requirements of CWA Section 404 (LEDPA, maximize avoidance, minimize impacts, compensate for unavoidable impacts) on its own.